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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

KEN BARRETTE,

Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION, A Washington
Corporation; FRIEDA MANDEL,
TRUSTEE OF THE FRIEDA MANDEL
LIVING TRUST, and DOES 1 through 10,
inclusive

Defendants.

Case No.:

CV08-03825JFW

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF: AMERICAN'S
WITH DISABILITIES ACT; UNRUH
CIVIL RIGHTS ACT; CALIFORNIA
DISABLED PERSONS ACT;
NEGLIGENCE**

DEMAND FOR JURY

Plaintiff KEN BARRETTE complains of Defendants COSTCO WHOLESALE CORPORATION, A Washington Corporation; FRIEDA MANDEL, TRUSTEE OF THE FRIEDA MANDEL LIVING TRUST, and DOES 1 through 10, inclusive, (hereinafter referred to as "Defendants") and alleges as follows:

JURISDICTION AND VENUE:

1. Jurisdiction: This Court has jurisdiction of this action pursuant to U.S.C. § 1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California state law.

1 2. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §
2 1391(b) and is founded on the fact that the improved real property which is the
3 subject of this action is located in this district and that Plaintiff's causes of action
4 arose in this district.

5 **PARTIES:**

6 3. Plaintiff is a California resident who suffers from multiple sclerosis. He
7 requires an electric wheelchair for mobility and a full time caregiver to assist him.

8 4. Defendants are or were at the time of the incident the owners and operators
9 and/or lessors and lessees of the warehouse store located at 1335 S. Bradley Road,
10 Santa Maria, California.

11 **FACTUAL ALLEGATIONS:**

12 5. The warehouse store is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 6. Plaintiff went to the warehouse store on April 22, 2007, with his wife,
15 daughters and friends to purchase groceries.

16 7. During Plaintiff's visit, he encountered various violations of the
17 Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24
18 of the California Code of Regulations, including, but not limited to, the accessible
19 parking was not properly configured and not accessible from the front of the vehicle,
20 and Defendants' employee had parked his car in the access aisle of a disabled
21 accessible parking place, thus eliminating a disabled accessible parking space for
22 use by Plaintiff in parking his van, by creating a barrier to its use, and when the
23 Plaintiff complained to Defendants, he was informed that Defendants' employee
24 parks his car in the access aisle.

25 8. Naturally, plaintiff BARRETTE was frustrated, angry and/or vexed as a
26 result of encountering these conditions, these violations of his civil rights, and the
27 lack of safe, convenient and accessible facilities. Although these injuries are modest
28 in scope and did not result in any loss of wages or economic damage or medical care

1 or attention, the continued violation of the plaintiff's civil rights by these defendants
2 and the highly unpleasant emotional distress caused by such unlawful treatment is
3 attributable to the actions or inactions of the defendants and plaintiff seeks redress
4 from these defendants for such injury.

5 9. Plaintiff would like to return and patronize the Defendants' warehouse
6 store but because of plaintiff's knowledge of the existence of the inaccessible
7 conditions, the plaintiff is unable to use the warehouse store on a "full and equal"
8 basis until the retail store is brought into compliance with the provisions of the
9 Americans with Disabilities Act Accessibility Guidelines and state accessibility law
10 as pled herein. Plaintiff has been and currently is being deterred from returning and
11 patronizing the Defendants' warehouse store.

12 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**
13 **DISABILITIES ACT OF 1990 (On behalf of Plaintiff and Against All Defendants (42**
U.S.C. section 12101, et seq.)

14 10. The defendants are persons who either own, operate, lease or lease to a
15 place of public accommodation. As such, the Defendants are required to (1) ensure
16 that all construction, alteration, or modification is barrier free and complies with the
17 Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24
18 of the California Code of Regulations (aka "California Building Code"); and/or (2)
19 remove all existing barriers where such removal is "readily achievable." The
20 Defendants have failed to meet these obligations. The existence of readily
21 achievably removed barriers and barriers in violation of the ADAAG and/or
22 California Building Code, including, but not limited to, the accessible parking was
23 not properly configured and not accessible from the front of the vehicle, and
24 Defendants' employee had parked his car in the access aisle of a disabled accessible
25 parking place, thus eliminating a disabled accessible parking space for use by
26 Plaintiff in parking his van, by creating a barrier to its use, and when the Plaintiff
27 complained to Defendants, he was informed that Defendants' employee parks his
28 car in the access aisle, is unlawful and has resulted in the defendants' failure to

1 provide full and equal accommodations, advantages, facilities, privileges and/or
2 services to the plaintiff.

3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
4 **RIGHTS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51-53)**

5 **11.** The defendants are persons who either own, operate, lease or lease to a
6 place of public accommodation or business establishment. As such, the Defendants
7 are required to (1) ensure that all construction, alteration, or modification is barrier
8 free and complies with the Americans with Disabilities Act Accessibility Guidelines
9 ("ADAAG") and Title 24 of the California Code of Regulations (aka "California
10 Building Code"); and (2) remove all existing barriers where such removal is "readily
11 achievable." The Defendants have failed to meet these obligations. The Defendants
12 intended the physical and architectural condition of their property. The existence of
13 readily achievable removed barriers and barriers in violation of the ADAAG and/or
14 California Building Code, including, but not limited to, the accessible parking was
15 not properly configured and not accessible from the front of the vehicle, and
16 Defendants' employee had parked his car in the access aisle of a disabled accessible
17 parking place, thus eliminating a disabled accessible parking space for use by
18 Plaintiff in parking his van, by creating a barrier to its use, and when the Plaintiff
19 complained to Defendants, he was informed that Defendants' employee parks his
20 car in the access aisle, is unlawful and has resulted in the defendants' failure to
21 provide full and equal accommodations, advantages, facilities, privileges and/or
22 services to the plaintiff.

23 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
24 **DISABLED PERSONS ACT (On behalf of Plaintiff and Against All**
25 **Defendants) (Cal Civ § 54-54.8)**

26 **12.** The defendants are persons who either own, operate, lease or lease to a
27 place of public accommodation or a facility open to the public. As such, the
28 Defendants are required to (1) ensure that all construction, alteration, or
modification is barrier free and complies with the Americans with Disabilities Act

1 Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of
 2 Regulations (aka "California Building Code"); and (2) remove all existing barriers
 3 where such removal is "readily achievable." The Defendants have failed to meet
 4 these obligations. The existence of readily achievably removed barriers and barriers
 5 in violation of the ADAAG and/or California Building Code, including, but not
 6 limited to, the accessible parking was not properly configured and not accessible
 7 from the front of the vehicle, and Defendants' employee had parked his car in the
 8 access aisle of a disabled accessible parking place, thus eliminating a disabled
 9 accessible parking space for use by Plaintiff in parking his van, by creating a barrier
 10 to its use, and when the Plaintiff complained to Defendants, he was informed that
 11 Defendants' employee parks his car in the access aisle, is unlawful and has resulted
 12 in the defendants' failure to provide full and equal accommodations, advantages,
 13 facilities, privileges and/or services to the plaintiff.

14 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of Plaintiff and
 15 Against All Defendants)

16 **13.** The defendants had a general duty and a duty arising under the Americans
 17 with Disabilities Act and the Unruh Civil Rights Act and California Disabled
 18 Persons Act to provide safe, convenient, and accessible facilities to the plaintiff in
 19 the running of their warehouse store business. Their breach of this duty, as alleged
 20 in the preceding paragraphs, has caused injury and damage as alleged above.

21 **PRAYER:**

22 Wherefore, Plaintiff prays that this court award damages and provide relief as
 23 follows:

24 **1.** For injunctive relief, compelling Defendants to comply with the Americans
 25 with Disabilities Act and the Unruh Civil Rights Act. **Note:** the plaintiff is not
 26 invoking section 55 of the California Civil Code and is not seeking injunctive relief
 27 under that section.

28 **2.** Damages under the Unruh Civil Rights Act and/or the California Disabled

1 Persons Act. **Note:** A defendant cannot be held liable for damages under both the
2 Unruh Civil Rights Act and the California Disabled Persons Act and the plaintiff will
3 make an election at trial depending upon the evidence amassed.

4 3. Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to
5 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ. Proc. § 1021.5.

6 Dated: June 3, 2008 CENTER FOR DISABILITY ACCESS, LLP

7
8 By: 
9 MARK D. POTTER
Attorneys for Plaintiff

10 **DEMAND FOR JURY TRIAL**

11
12 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

13 Dated: June 3, 2008 CENTER FOR DISABILITY ACCESS, LLP

14
15 By: 
16 MARK D. POTTER
17 Attorneys for Plaintiff
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